A TREATISE

ON THE

Law of the American Rebellion,

AND

OUR TRUE POLICY, DOMESTIC AND FOREIGN.

By **DANIEL GARDNER, Jurist,**

AUTHOR OF "GARDNER'S INSTITUTES OF INTERNATIONAL, INTER-STATE AND AMERICAN PUBLIC LAW," AND MEMBER OF THE NEW-YORK BAR.

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IN MEMORIAM.

The author acknowledges, with pleasure, consultations with his distinguished friend, the Hon. William Curtis Noyes, on the subjects treated of in this Pamphlet, and for which, and for his lofty patriotism, and high powers and learning as a lawyer, devoted to his country's cause, the author desires to record his gratitude and high regard.

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MARTIAL POWER OF PRESIDENT.

THE opinion and documents in the case of Benedict, before Mr. Justice Hall, District Judge of the Northern District of New-York, on a writ of *habeas corpus*, are before us.

The proceedings and opinion of Chief-Justice Taney, in the *habeas corpus* case of Merriman, the bridge-burner and warlike rebel, are also before us.

The opinion of Hon. Benjamin R. Curtis, late Justice of the Supreme Court of the United States, is before us.

Chief-Justice Taney, Ex-Judge Curtis and Mr. Justice Hall, seem not to be aware of, or they ignore the fact, *that a plenary executive and martial discretionary power is conferred on the President* by the National Constitution, (art. 2, § 1, subd. 1, 8, 9; § 2, subd. 1; § 3, art. 4, § 4,) as now settled by Congress in Gen. Jackson's New-Orleans *habeas corpus* and martial law case, (5 *U. S. Stat. at L.* 651,) and by Justice Nelson's decision at a New-York United States Circuit Court, in Durant *vs.* Hollins, an action for injury done by Captain Hollins firing on Greytown, by order of President Pierce. The learned judge held, that no action would lie against the captain, as the President's discretion was supreme and final; that the command of the President protected Hollins, as he obeyed a martial order of the President, which no court

could review or disregard. This act of Congress, and the decision of Mr. Justice Nelson and the Circuit Court, establish a full discretionary martial power, which, in war and in martial conflicts, is vested in the President by the Constitution of the Union, and with which no court or judge can interfere, revise or annul.

These gentlemen and some able jurists, not seeing the distinction between civil and martial treasons, in the nature of the case, suppose that the Constitution provides for the trial and punishment of all treasons; whereas, civil only, and not such as now abound, are there treated of.

The assassinations at Baltimore, of 19th April, 1861, and hundreds of murders of loyal men in Rebeldom, go unpunished, as the sword and martial law alone can punish them. The murderers of the Massachusetts soldiers now repose safely as neighbors of Chief-Justice Taney.

They also ignore the numerous decisions of the National Supreme Court, including Chief-Justice Taney, declaring that the President had a constitutional martial authority to govern conquered Mexico by his martial officers and martial discretion, establish duties and collect them by his military officers; and that, where the President has a discretionary, executive or martial authority, his decision is final, and no court can, by any proceeding, revise it or set it aside. (See authorities below.)

They suppose that the national judges can, *by a writ of habeas corpus, take supreme control over the President and his officers of the army and navy, in cases martial and naval.* This is a mistake, as persons within military custody and jurisdiction, for martial offences, are beyond the civil Code, and subject to the President's martial power, and to his military commissions and courts-martial. In these martial cases the civil judge or court has no authority.

These opinions of the three learned gentlemen are against the law, as settled by authority, and their publication has given aid and comfort to the rebellion.

The judiciary, according to these gentlemen, have a *supervisory supreme power over all martial arrests, and all martial or executive acts of the President in all cases*, even though the Constitution of the Union has conferred on him *a supreme discretion, to be exercised for the preservation and protection of the American people, and as their elected representative President.*

If this is true during our civil war with armed rebels, at one time covering one-third of our territory, with traitors in Congress, in official and other influential positions, our Con-

stitution is a *felo de se*, and has provided, as that of Poland did, for its own destruction.

There is *a bold daring* on the part of Chief-Justice Taney and Mr. Justice Hall to set up for themselves a power, by issuing a writ, to command the commander-in-chief, our major-generals and other military officers, to omit all military movements, and bring before the judges a spy or a bridge-burner, like Merriman, who acted in aid of the rebels seeking to insure their taking Washington, and await the *superior orders of Justices Taney or Hall.* County state judges have had the audacity to assume a like jurisdiction over the martial acts of the commander-in-chief of our armies, on the principles of these gentlemen. A Kings County judge tried to deliver this martial offender, by *habeas corpus*, from the power of martial law, as Mr. Taney had before done, and both failed, as their writs were properly disregarded.

Our government, like every other, has a plenary power of self-preservation, by aid of the courts civil in peace, and by martial power in war. In cases of invasion or insurrection, the President or his generals, by his authority or by his approval, may do all acts judged to be a military necessity, both as to property and persons, and the *Code civil* has nothing to do with such cases. The civil Code and its judges are powerless to put down this mighty rebellion, and the armed power, the martial Code of necessity, supersedes the civil.

Congress is restrained from passing a general law suspending the *habeas corpus*, except in cases of rebellion or invasion. *Such a general law, if passed, would be sweeping, and is wholly different from martial law*, which is limited to martial offenders, to specified places, and to periods of great danger, and, so far as necessary, supersedes the civil law during the perils of war. When this war ceases, the *Code civil* is restored fully.

The martial power acts at *once*, and is conferred on the President without limit; and this discretionary power is confided to him both as civil and military chief; and no judge or court can review it, or interfere with it by *habeas corpus* or otherwise. (See Ch. J. Parker's *habeas corpus* and martial law article in the *North American Review* for October, 1861, 1 *Cranch R.* 165, 28.) Mr. Justice Nelson, of the Supreme Court of the Union, so held in the United States Circuit Court, in New-York, in Durant *vs.* Hollins, (1 *Dall.* 362; 17 *John. R.* 52; *Upton's Mar. Warf. and Prize*, pp. 84–88; *Attorney-General Wirt's Opinion in Capt. Bell's case, Op.*

Atty. Gens. A. D. 1841, pp. 371–8; *Gardner's Inst.* 78, 333, 352, 364, 195, 205, 555, 600—608 *for decisions of English and American courts.* See 13 *How. U. S. R.* 115, 128; 12 *Ib.* 524; 16 *Ib.* 164; 9 *Ib.* 603, 614; 7 *Ib.* 39, 45; 11 *Ib.* 272; 20 *Ib.* 135; 10 *Ib.* 504; 1 *Gallis.* 295; 1 *Curtis C. C. R.* 308; *Const. U. S.*, art. 2, §§ 1, 2, 3. See 8 *Cranch R.* 110; 4 *Wheat.* 254; 12 *Ib.* 19.) Professor Parsons, of Cambridge, Massachusetts, has given his assent to our doctrines in a brief reply to Ex-Judge Curtis, and he truly declares that the rebels, seeking to destroy our national Constitution and all law, have forfeited all rights of person and property under the Union, State and national laws they have repudiated. The opinion of this eminent jurist fully accords with the settled law.

The United States District Court for Vermont has assented to our doctrine, in Field's case, as to the President's martial power. The National District Court for the Southern District of New-York has acted in accordance with our above explanations of the law, as might have been expected from so distinguished a jurist as Judge Betts.

General Halleck's Int. L. and *L.* of *War*, pp. 375—380 in point. The declaratory act of Congress, approving of General Jackson's declaration of martial law at New-Orleans, in 1815, and removing Judge Hall beyond his lines for sending a *habeas corpus* to take from him an editor, arrested for martial reasons, passed in 1844. (5 *U. S. St. at L.* 651.) By this act, the $1,000 fine, and interest, were ordered repaid to the patriotic general out of the national treasury. See the opinion of Edward Livingston, an eminent jurist, justifying the acts of General Jackson. He was the general's aid and adviser in all the martial law proceedings, and advised the same, and the disregard of the judge's *habeas corpus.* Here is a declaratory act affirming the President's and his officers' martial power, as above asserted. The act of Congress settles the law.

The King's Bench, in England, (4 *Term R.* 796,) held that it was a principle of the common, as well as the civil law, *that the safety of the people was the supreme law;* and that an officer erecting bulwarks, forts, &c., on private property, was not liable to an action, but the only claim was on government. Upon the same principle the Supreme Court of New-York, by Chief-Justice Spencer, decided that the destruction of a private vessel, to keep it from the enemy, gave no right of action; and so the Supreme Court of Pennsylvania held. (17 *Johns.* 52; 1 *Dall.* 362.) Of course, they held that martial law superseded the constitutional principle that a

man's property could only be taken from him by a decree of a court.

In the cases above referred to, Chief-Justice Taney and his court held that the *President's martial power was a constitutional authority in war, and superseded the civil Code.* (See above authorities.)

John Quincy Adams, one of the ablest publicists of our country, in three speeches in Congress, in 1836, 1841 and 1842, declared that the President, in case of invasion or insurrection, had legal authority, as a war measure, to emancipate all the slaves in the Union, by his simple, potent order as commander-in-chief. Gov. Thomas Jefferson, an able jurist and publicist, declared that the British seizure of some thirty of his Virginia slaves was, by the law of nations, legal, if they were emancipated. (*Jefferson's Letter to Dr. Gordon, Jeff.'s Works.*) Here, then, we have conclusive authority in favor of the President's war emancipation proclamation. The opinions of these eminent men are conclusive on this point.

General Bolivar, by his war power, abolished slavery in Colombia, and the emancipation was permanent.

The three speeches of Mr. Adams are in point, as the following extracts show. He said in his speech of May 25th, 1836, to the representatives of the slave-oligarchy specially, in the House of Representatives of the Union: "From the "instant that your slaveholding States become the theatre of "war, civil, servile or foreign, from that instant, *war powers* "*of Congress* extend to interference with slavery in every "way in which it can be interfered with, from a claim of in- "demnity for slaves taken or destroyed, to the cession of a "State, burdened with slavery, to a foreign power."

On the 17th day of June, 1841, this eminent and noble statesman declared to the House, that in a rebellion like this, the supreme government would have the power of general emancipation.

In 1842, this venerable statesman said to the House:

"I lay this down as the law of nations. I say that the "*military authority* takes, for the time, the place of all "*municipal institutions, slavery among the rest.* Under "that state of things, so far from its being true that the States "where *slavery exists have the exclusive management of the* "*subject, not only the President of the United States but the* "*commander of the army has power to order the universal* "*emancipation of the slaves.*"

And then, again, he announces in words further applicable to the present hour:

"Nor is this a mere theoretic statement. Slavery was "abolished in Colombia, first, by the Spanish General "Murillo, and secondly, by the American General Bolivar. "It was abolished by virtue of a military command given at "the head of the army, and its abolition continues to be law "to this day."

Lord Dunmore, British Colonial Governor of Virginia, November 7, 1775, issued a proclamation to slaves and indented servants, offering them freedom and arms if they should join his standard and aid in putting down the American rebellion. They flocked to him and gave him a temporary ascendency. (See *Marshall's Life of Washington*, *B.* 1, *c.* 4.)

When the Constitution was formed, Generals Washington and Hamilton probably caused the insertion of the principle that the President should be the commander-in-chief of our navy and army, and of the militia in service, so as to clothe him with the martial power necessary to a state of war, *i. e.*, with the power to supersede the Code civil, so far as he judged martial power essential to the public safety. The Roman maxim was *Leges silentur inter arma.* In war the martial supersedes the civil, as far as the Roman dictator judged necessary to the public safety. All nations have adopted it and acted on it. It is a doctrine essential to defend a nation from foreign and domestic foes. Gen. Wilkinson declared martial law at New-Orleans to put down Burr's conspiracy; Gen. Jackson did the same to defend New-Orleans and the valley of the Mississippi from British conquest, and the then Presidents and their cabinets approved these acts; and the people of the United States have approved them. President Lincoln resorts to martial law to put down the largest rebellion history records—*the slaveholders' rebellion.* The constitutional power exists in the President and his military officers, and in those acting by his order, to substitute the martial for the civil authority so far as the President and his commanders judge it necessary to suppress the rebellion. This is the law as settled by Congress, and by several Presidents and their cabinets. President Lincoln follows the example of his predecessors in office.

No errors of judicial gentlemen, whether from sympathies, political feeling or other motive, can alter the fact, that our Constitution contains a Code martial and a Code civil; and each must perform its functions so as to ensure the public safety in peace and in war.

LAW OF THE REBELLION.

A few propositions will explain the law of this rebellion:

1. The national and State courts have recognised the constitutional martial power of the President and his officers, in time of war, to supersede the civil Code, including constitutional civil provisions to the extent of adjudged military necessities, and to act *instanter* for military reasons. Hence our prize confiscations and arrests.

2. That treason against our Union is of two classes, one civil, the punishment and process of which the Constitution regulates. The other is martial, such as an armed rebellion to destroy our republic. It includes all persons within the limits of the United States who in any way or in any degree intentionally aid the same, and all Americans on the high seas, or in foreign countries, who give assistance there to the rebel cause.

3. All acts that tend to injure our army or navy, in any manner, or that, in any way, aid a foreign belligerent, or an armed rebellion, constitutes a martial treason, and may be tried and punished by military commission or court-martial, by death or imprisonment, as seems just. In this class are included the murderers of the loyal volunteers in Baltimore on the 19th of April, 1861, Merriman, the Baltimore marshal, Jeff. Davis, Floyd, Breckenridge and others.

As war on a great scale has been made by these persons, and a general confiscation ordered by the traitors against all loyal property, the President and Congress may lawfully confiscate, by the *lex talionis*, all the slaves, plantations and other property of rebels, wherever found. It would be a just retribution and a sensible war measure.

The *lex talionis* fully authorizes the President, as commander-in-chief, to meet the *universal confiscation of loyal property in rebeldom*, and the assassination of loyal men there, as well as American prisoners, by applying to all rebel property and persons the same rule, by way of just retaliation. (*Vattel*, B. 3, c. 8, s. 142; *Wheat. Int. L. P.* 4, c. 1, ss. 1–4; *Gard. Inst.* 517, 509, 510, 565, 618.)

If the perverse mania of the traitors continues until their oppressed slaves, by a just retaliation, rise forcibly upon their semi-savage masters, and resist them with the same bloody scenes and havoc they have occasioned, without cause, to loyal American citizens, it will add one more to the historic examples of self-inflicted punishment, administered by God's

justice upon the wicked, as a necessary result of their own crimes.

So perished the Roman commonwealth by wars of conquest and by slavery, by the just retributions of God's providence. These crimes of that mighty nation were the clay foot that the prophet Daniel saw, half supporting the gigantic iron image that foreshadowed Roman power, and its decay and fall.

So will perish American slavery and the American slave-oligarchy, with all its pride, its cruelty, its corruption and its dominion.

4. The rebels, having *repudiated and destroyed their title-deeds to their slaves*, by nullifying in all rebeldom the State Union governments, and the United States Constitutional guarantee, have freed their slaves, agreeable to the principles of Josephine's case, decided by the Supreme Court of Louisiana. (1 *Louis. An. R.* 329.)

Notwithstanding this, the President has given the rebel slaveholders until January 1st, 1863, to return to their allegiance; and in that event he leaves the *status* of the slaves to the courts.

The fate of slavery and of the rebels is in their own hands until January next.

5. All martial rebels aiding the enemy in any way, or impeding our government or its forces in suppressing the rebellion, by intelligence, by money, by decrying the war, by impeding enlisting, by refusing to call out forces as Magoffin did in Kentucky, all such rebels and their property are subjects for a military commission and martial confiscations, upon the principle of the *lex talionis*. The rebel mayor who aided, by his official power, Southern rebels to arms, is within the principle.

6. Self-preservation is the first law of nature, and belongs to all nations alike; and martial law is proclaimed and enforced among all nations. Great Britain declared freedom to Southern slaves at the Revolution as a war measure, and Jefferson declared it lawful if the slaves were emancipated.

If martial law is not enforced, rebel assassins and traitors will escape punishment wholly, as those Baltimoreans of April 19th, 1861, have done.

7. *The President proclaims martial law to prevent the dissolution of the Union, to preserve our free institutions, and to put down a rebellion got up by an unholy triumvirate, composed of military aspirants, political demagogues and Southern slaveholders. The motive is patriotic, and his acts are legal and constitutional.*

8. As the slaveholders and their allies have gotten up a great civil war, two classes of rights arise against the rebels, one under the law of nations, adopted as part of our Constitution under the war-powers of the President and Congress, and the other under the civil Code against treason. (*Const. U. S.* art. 2, § 1, subds. 1, 8, 9; § 2, subd. 1; § 3. Art. 4, § 4. Art. 1, § 8, subds. 1, 2, 10, 11, 12, 13, 14, 15, 17. Talbot *v.* Seaman, 1 *Cranch*, 28, 31; Brown *v.* United States, 8 *Ib.* 110; the Rapid, 1 *Gallis.* 295; the Francis, 1 *Ib.* 445; the Emulous, 1 *Ib.* 563; 14 *Pet.* 570; 5 *U. S. St. L.* 539; *Gard. Inst.* 98, 286–7, 52, 194–5, 208–9, 293, 333, 353, and authorities cited. See, also, *Const. U. S.* art. 3, § 3, subds. 1, 2; *Upton's Maritime Warfare and Prize*, 212.) Mr. Justice Sprague, District Judge of the United States for Massachusetts, laid down this doctrine in these words: "The United "States have full belligerent rights, which are in no degree "impaired by the fact that their enemies owe allegiance, "and have added the guilt of treason to that of unjust war." So the national Circuit and District Courts generally have held.

As a consequence, martial courts and military commissions, and the President, as commander-in-chief, and his generals, may seize the realty and personalty of rebels, and all title thereto, under the law of nations, as General Butler has properly done in Louisiana, and permanently hold the same as national property, in fee, by a perfect title. (*Vattel*, B. 3, c. 8, § 142; *Wheat. Int. L. P.* 4, c. 1, §§ 1–4; *Gard. Inst.* 517, 509, 510, 565, 618, 484; 7 *Alexander Hamilton's W.* 346–351; 8 *Cranch*, 110; 3 *Dall.* 210, 222, 227, 266.)

So, upon conquest of any rebel State or its public domain, and holding same until the rebellion is crushed out, it becomes, with all private realty so taken and held, a permanent part of the public domain of the United States. (*Ib.* and 4 *Wheat.* 254; *Wheat. Hist. L. N.* 572; *Gard. Inst.* 585.)

The third section, subd. 2 of art. 3 of the Constitution of the United States, which declares that "Congress shall have "power to declare the punishment of treason," and that "no "attainder of treason shall work corruption of blood or for-"feiture, except during the life of the person attainted," applies only as a restraint upon the power of Congress, and to civil treasons prosecuted before the courts, and not to a mighty civil war where the national courts are powerless, and some twenty national judges of the Supreme Court of the Union,

its Circuit and District Courts, have joined the rebellion, either openly, or retain their judicial positions to protect their rebel allies by writs of *habeas corpus* and otherwise, in their persons and their properties, by prostituted judgments, from deserved martial as well as civil confiscations. (*Gard. Inst.* 296, 371, 314–316; 7 *Pet.* 434.)

NATIONAL JURISDICTION OVER REBELDOM.

9. It is settled by the unanimous decision of the national Supreme Court, in the American Insurance Co. *v.* Canter, (1 *Pet.* 542, 543, 546,) that where there was no existing legal Union State government, as in Florida, the case before the court, and the place, was within the limits of the United States, such territory was subject to the plenary legislation of Congress and to the power of the national administration. (*Gard. Inst.* 169, 170, 171, 172; *Const. U. S.* art. 1, § 8, subd. 1; 12 *Pet.* 619; *Gard. Inst.* 295.)

So, Congress may legislate fully for the territory now occupied by rebeldom and its so-called States and Confederacy, now, as well as when the rebellion is crushed out, and its duty is to pass all laws necessary "*to provide for the common* "*defence and general welfare of the United States.*" (*Const.* art. 1, § 8, subd. 1.) The 1st and 17th subdivisions of section 8, art. 1, confer plenary power on Congress. (*Gard. Inst.* 297.)

SLAVERY—EMANCIPATION.

10. Slavery curses master and slave, and the soil the poor bondman cultivates. *It is condemned by our Declaration of Independence, and was tolerated by our revolutionary fathers as a temporary evil to be soon removed by emancipation.* Such were the views of Washington, Jefferson, Alexander Hamilton, Benjamin Franklin, Monroe, John Adams, and nearly all the founders of our government and framers of its Constitution held these doctrines. (See *Jefferson's Notes on Virginia*, the *Declaration of Independence* and *Jefferson's Letter of* 1814,) in which he declared that "*the love of justice* "*and the love of country plead equally the cause*" (emancipation) "*of these people; and it is a moral reproach to us that* "*they should have pleaded it so long in vain.*" Washington said that he was for the "*abolition*" of slavery; and he added, "*It being a wrong, my first wishes are to see some plan* "*adopted by which slavery may be abolished by law.*"

At a late day in the Constitutional Convention of Virginia, presided over by Mr. Monroe, late President of the Union, a

friend of the abolition of slavery, similar sentiments were expressed by many of the leading men of the convention. Jefferson, in his *Notes on Virginia*, had declared slavery a curse to the whites and blacks alike—a curse social, moral and political. One of the ablest men of this convention, inspired by the spirit of Washington and Jefferson, boldly declared before the convention in debate, that slavery was a nuisance, and *that the State had a right to abate it without compensation for that reason.* So, this nuisance was abated in New-England, New-York, New-Jersey, Pennsylvania and the territory northwest of the Ohio, and so it ought to be throughout the United States, from the Atlantic Ocean to the Pacific, so that no slave should tread the soil of our republic.

The voice of Europe is against slavery. (See *Westminster Review* of October, 1862, on the slave power; Prof. Cairnes on same, there reviewed, and Count de Gasparin on same, and the treaties of Vienna and our treaty with Great Britain of 1842, (8 *U. S. St. L.* 576, *Art.* 8, 9,) and like late treaty enforcing it fully.)

11. Rebeldom has been shown to be part of the national territory, and subject to its plenary legislation; and it follows that the acts of Congress of 1862, excluding slavery from all our national territory, emancipated all slaves then within the rebel States. So that by acts of Congress, one with partial compensation, and the others without, there was a universal emancipation and abolition of slavery in the District of Columbia, and in all our national territories, the area of rebeldom included. (*Acts Cong.* 1862; *Laws Cong.*, *U. S. St. L.* 376, 432, 590–1.)

12. The President's Proclamation of Emancipation, so called, merely declares that, by his supreme martial power, he will recognise all black men inhabiting any part of our Union where rebels shall be carrying on civil war against the government of the United States on the 1st of January, 1863, as free men; and that from that day rebel masters will cease to own the slaves of fighting rebeldom. It properly recognises the freedom already existing, by virtue of secession and the territorial Emancipation Act of 1862.

So, as we have shown, first, emancipation was effected throughout rebeldom by secession; secondly, by acts of Congress of 1862; and thirdly, by the President's proclamation of recognition. The latter is, in legal effect, a declaration of what is already a completed emancipation by our and by European public law. (*Gard. Inst.* 479, 480, 491, 492. *Amistad Case*, 15 *Pet.* 518, 595.)

The proclamation was a war measure only, and it is essen-

tial as a means of crushing out this rebellion. Its effect will be to take eight hundred thousand fighting and working men from the rebels; and their emancipation being assured by the President, they will work and fight for our republic instead of working rebel plantations, raising corn, wheat, cotton and rice, and building rebel fortifications, working rebel guns, and sustaining *traitor abolitionists in destroying our Union and free institutions.* (See *Livermore's Hist. Res.*, Boston.)

The rebels have forced the abolition of slavery themselves. Beauregard should call them "abolitionists," instead of acting as chorister to pitch this tune for some of James Buchanan's disciples, most of whom, in the last presidential election, voted for the traitors, Bell and Breckenridge, now in arms against the Union.

HOW SHALL WE CRUSH THIS HYDRA OF REBELLION?

13. By inviting the slaves of rebels to take arms and defend the freedom we give them. Lord Dunmore, royal governor, November 7th, 1775, issued a proclamation calling all slaves and indentured apprentices of Virginia to join his standard and aid the British troops to put down the American rebellion; and large numbers fled to him and received arms, and served against the patriotic Virginians. (*Marshall's Life of Washington*, *B.* 1 c. 4.)

Our patriotic fathers met this policy by a similar one. The raising and organizing in arms black forces, slaves and free blacks, for the defence of our republic, was approved by Congress; and that body passed resolutions requesting the States to arm and equip these slaves, and to grant them their freedom as an inducement and just reward for their military services in defence of free institutions. Generals Hamilton and Greene, Col. Laurens, of South Carolina, and James Madison, and southern as well as northern whig officers and people, agreed in this policy and commended it. Several of our States had black regiments in the field, and they rendered good services in gaining our and their freedom. Gen. Alexander Hamilton's opinion was decidedly in favor of the employment of emancipated slaves as American soldiers. (See *Geo. Livermore's Researches.*) Gen. Jackson had black soldiers in New-Orleans on the 8th of January, 1815, and they shared in the glory of that memorable day. *The use of black emancipated soldiers was a settled revolutionary policy of our American patriots.* (See *Historic Researches* on this subject, by George Livermore, of Boston, and see appendix as to war of 1812.)

What so wise as to spare our white citizens and use colored

emancipated soldiers, burning to conquer the masters who have reduced them to the condition of brutes, and shut up heaven from them by making it a crime to teach them to read even the Word of God?

How fit it is that this semi-barbarous chivalry should be beaten down in arms by those they have cruelly oppressed and robbed of all property and of all family ties, and left them, in the language of Chief-Justice Taney, in the Dred Scott case, with *no rights that their masters were bound to respect.* A condition worse than that of Roman or Algerine slaves.

Let twenty-five or fifty thousand emancipated blacks be called to arms beneath the stars and stripes of freedom, and the whole of the black mud-sills of the South will abandon their heartless oppressors, the so-called chivalry.

POOR SOUTHERN WHITES.

14. Five millions of "white trash," sand-hillers and clay-eaters in the Southern slave States, degraded, poor, ignorant, brutal and wicked, must be separated from the small 350,000 slave-oligarchy that oppresses them, and, by the sword of freedom, they must be brought up to the standard of intelligence and moral freemen. To do this, let the process of sequestration, begun by General Butler, go forward as our armies advance, and let homesteads be furnished these white political serfs and bondmen of the Southern aristocracy, out of their plantations justly confiscated. This policy once made fully known in the South, the influence and power of this proud and cruel caste would be destroyed forever.

FREE STATE AND POLITICAL EMANCIPATION.

15. Those measures will emancipate northern and western parties and statesmen from the slave power.

COMPLETE EMANCIPATION—BORDER STATES.

16. Its effect in all the border States will be *to double the value of their entire realty, and convert the slaves into intelligent, hired laborers, able to read, write and cipher, and to provide by their industry for their wives and families.* Above all, the Word of God will be opened to the benighted souls of these people.

Emigration from Europe, and the North and West, with wealth and industry, will pour into the border States, and

the morality, wealth and prosperity of those States would be greatly increased. No purchase of slaves is needed, nor is it proper for this resuscitation of States perishing by the dry-rot of slavery. Our war tax of one thousand millions, and three hundred thousand Americans killed or maimed in battle, will be our only offering to the Moloch of slavery.

FOREIGN POLICY.

17. The oligarchy of Great Britain, and the improvised Emperor Louis Napoleon, sympathizing with the slave-oligarchy, contrary to the law of nations, to national comity and to our treaties of peace and commerce, have urged up the Southern rebellion, and are now fomenting and sustaining it by arms, by their presses, speeches, diplomacy, and by piratical raids on the sea from British ports, capturing and burning American ships. (*Treaties*, 8 *U. S. St. at L.* 228, 576, arts. 8, 9, pp. 430–1; *Gard. Inst.* 507–516, 550, 627; 7 *Wheat.* 284, 350–356, 496; *Vattel*, B. 2, c. 18, § 348.) Our government ought to meet this unfriendly policy—this war on us—with firmness, and a bold demand for instant redress.

The people of the loyal States, one and all, ought instantly to form associations for the non-consumption of British and French manufactures until our grievances are redressed.

This measure, if generally adopted, would revolutionize France and dethrone Louis Napoleon, the self-made military despot of uncertain paternity, and drive the proud oligarchy of Britain to despair and humility.

EUROPEAN LIBERALS AND SUFFERERS.

18. In the midst of the dark cloud that rises over Europe, and moves menacingly toward our shores, we can see lightning flashes of freedom. The Emperor Alexander of Russia, the ablest and most liberal sovereign of Europe, is now liberating, against the fierce hostility of his slaveholding nobility, more than twenty millions of slave-serfs. The sympathy of this royal friend of freedom and Russian interests are in favor of our Republic. The Emperor, backed by his mighty armies, holds back the British Cabinet and the improvised Emperor by military *coup d'etat* from intervention by arms.

The Liberator of Italy, the noble Garibaldi, Victor Hugo, Gasparin, Mills, Cairnes, the *Westminster Review* for October, 1862, reviewing Prof. Cairnes' valuable work on American and ancient slavery, Bright and Cobden, and other eminent Europeans and able journals, defend our Republic and the cause of freedom, of emancipation and of humanity.

As to poor and starving French and British people, let our ships be filled with food to overflowing, and be sent to French and British ports, and be freely distributed, as in Ireland, in 1847, to save the sufferers from starvation and death. The Chamber of Commerce of New-York has inaugurated this noble work of charity, and munificent private contributions have followed. Let it go on.

GRAND TRIAL BETWEEN FREEDOM AND DESPOTISM.

19. Divine prophecy and tradition have declared that a great battle of freedom and despotism was to be fought, with mighty carnage and terrible destruction. So prophesied Napoleon at St. Helena. The United States have furnished the field of the vast war now raging along three thousand miles of our coasts, and which, at times, have covered one-third of the area of our Republic. Americans, Saxons, Celts, Northmen, Germans, Frenchmen, French princes, Turkish officers, nobles and free citizens, to near one million, are joined in military and naval defence of the world's freedom, and of our Republic, and of our free institutions. Davis, Floyd, Toombs, Lee and their fellow-traitors, have created a military despotism, and made war on free institutions. They are backed secretly by the Palmerston Cabinet, and by Louis Napoleon, and by most of the European privileged classes, from common interests and common sympathy. Well might Louis, the betrayer of his oath and of France, sympathize with Davis and Floyd, perjured American traitors, as both have offered on the blood-stained altar of despotism hecatombs of slaughtered Frenchmen and Americans.

Holy Writ declares that the war shall be terrible, but that the right shall prevail, and the defenders of liberty, civil and religious, led and protected by Jehovah, shall triumph. Americans, friends of freedom, look to the pillar and cloud, and forward—the Red Sea of blood is before us, but the Lord of Hosts will lead us through it.

CONCLUSION.

The ways of the Lord are past finding out. We can see a red sea of blood only, but there is a way through it, if we will follow the pillar and cloud. The Lord is our light and our salvation, whom shall we fear? The Lord is the strength of our life, of whom shall we be afraid? Above the dark storm-cloud the glorious light of the sun is shining in beauty, as the æronauts tell us. So God's almighty power encircles us

on every side ; let us trust in Him, and use all the means he places in our hands to crush out this gigantic, wicked, slaveholders' rebellion, and we doubt not the Lord will bless us with victory, with peace and with national unity. It cannot be that Davis, Stephens & Co. can found a slave empire, covering a large part of North America and the adjacent islands, the corner-stone of which is the eternal, hopeless, brutal slavery of many millions, with all human and divine knowledge shut out from their souls, and this impiously proclaimed by the so-called Vice-President Stephens, the stone that the builders rejected, which became omnipotent in Jesus Christ, God manifest in the flesh, whose millenial power is to cover the earth as the waters cover the oceans and seas.

Note.—Since writing the above we have received from the author, George Livermore, Esq., his invaluable "Historical Research," as to the opinions of the Founders of our Republic on negroes as slaves, as citizens, and as soldiers. This able work proves beyond question that these founders of our freedom and independence were in favor of universal emancipation and of employing negroes as soldiers of freedom, and that black battalions of emancipated slaves made excellent soldiers. Our patriots of that day agreed with Patrick Henry who triumphantly asked, "May Congress not say that *every black man must fight?*" See the above work, page 98 and onward to 215. Washington and the first Congress consecrated all our territories to freedom. (1 *U. S. L.* 50.) So did our Congress of 1862.

We have also received from the authors able replies in pamphlets to Judge Curtis, by Charles P. Kirkland and G. P. Lowrey, Esqs., which in our judgment are complete and perfect answers.

APPENDIX.

New-York policy under Governor Daniel D. Tompkins, afterwards Vice-President of the United States, and Martin Van Buren, late President, and the Democratic party of the State in 1814, *in the war with Great Britain.*

In October, 1814, an act of the Legislature of New-York was passed, entitled "An act to authorize the raising of two regiments of men of color." (See *Sess. Laws N. Y.* 1814, pp. 22, 23.)

This act authorized the raising of two full regiments of free negroes and emancipated slaves, to form a part of the martial power of the State, and with authority to the Governor to place them in the service of the United States. By reference to the act, it will be seen that the State of New-York, as well as General Jackson, acted on the revolutionary policy of using free negroes and emancipated slaves to conquer the enemies of our Republic and of our free institutions.

Civil Code—Crimes affecting the Life of our Republic—Their Punishment.

TREASON.

Treason, by our Constitution and law, consists in levying war against the United States; by an assemblage of persons for a treasonable object, such as a dissolution of the Union by force or menace; or to compel forcibly a change of administration; or to coerce the repeal of an act of Congress by compulsion; or to compel officers to resign, and thus defeat an act of Congress in its execution, in any State, county or place, such as a conspiracy by force or menace to destroy the Union, or to overturn any duly elected President and his administration. (*Gard. Inst.* 323, 324, 325, 326 and authorities there cited; *Const. U. S.* art. 3, § 3.)

All persons having knowledge of any such treasonable objects, who shall, in any way or in any degree, whether remote or near the place of assembling, aid in promoting such treasonable designs, are traitors. (*Ib.*) So are all who adhere to the enemies of the Republic, or give them aid and comfort. (*Ib.*) 1 *U. S. St. L.* 112, 118, 119.—The punishment of treason is death.

MISPRISION OF TREASON.

Any person having knowledge of any treasonable project is bound to disclose it to the President, or to a United States judge, or to a Governor of a State or a State judge, or he is guilty of misprision of treason, and may be fined one thousand dollars and imprisoned for seven years. (*Gard. Inst.* 326; 1 *U. S. St. L.* 112, 119.)

OBSTRUCTION OF LAW.

Particular acts of resistance to an act of Congress, not having for their object the defeat of the general execution of the law, in some given place, is not treason. (*Gard. Inst.* 332.)

CONSPIRACY AGAINST THE UNITED STATES.

Conspiracy to commit treason, or to aid in it, by word, deed, printing or writing; by a governor's message; by a speech in Congress, in a legislature, or through the medium of a newspaper or other publication; or by any other mode, whether by private persons or officials, is now a misdemeanor, by act of Congress, passed on the 31st day of July, 1861. (*U. S. St. L. for* 1861, p. 284.) The original act was drawn by the author, and it was meant to reach, and does reach, all and every act, word, deed, printing, writing or speaking, done, spoken or uttered, to promote the forcible severance of the Union, in any contingency, or defeat it, or impede any power or authority of the United States government. The punishment is a fine not exceeding five thousand dollars, and imprisonment not exceeding six years, both or either. This is a humane law, and is intended to prevent the commission of treason by punishing, as a misdemeanor, the incipient conspiracy to commit treason, and thus render capital punishment unnecessary.

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